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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**MAR - 1 1995**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Amendment of Part 90 of the )  
Commission's Rules to Facilitate Future )  
Development of SMR Systems in the )  
800 MHz Frequency Band )

and )

Implementation of Section 309(j) of the )  
Communications Act - Competitive )  
Bidding )  
800 MHz SMR )

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PR Docket No. 93-144  
RM-8117, RM-8030  
RM-8029

PP Docket No. 93-253

To: The Commission

REPLY COMMENTS

T&K Communications, Inc. (T&K), by its attorneys, respectfully submits its comments in reply to comments filed in the above-captioned matter. T&K strongly opposes the proposals put forth the above captioned rule making. T&K further opposes all of the recent efforts of finding an industry consensus, which might characterize as acceptable all manners of forcing frequency reallocation, diminish the growth potential of analog SMR operators, reduce the value of analog SMR businesses, force end users to accept the pains of frequency reallocation, and, in general, place an inequitable burden on the operations of existing, vital SMR systems. In support of its position, T&K shows the following:

### Analog Operators must Remain Able to Compete

These proffered compromises by persons, companies and associations which are forwarding private agendas in contrast to the interests of industry members, must be rejected. They do nothing except attempt to reduce the importance of maintaining the opportunities which legitimate analog SMR operators have earned over the years of developing the vital telecommunications marketplace called the SMR industry. Only by a complete rejection of the proposals can analog operators continue to compete effectively and properly in the very marketplace which they created.

T&K has read Nextel's comments which extol the value and virtues of the SMR marketplace. As a member of this industry, T&K points with pride to its contribution to this growth and the 1.5 million satisfied users of SMR service. The wide acceptance of SMR service is the product of hundreds upon hundreds of small operators selling service one two-way radio at a time, serving the increasing demand. It should be noted, however, that Nextel's contribution is less laudable.

Nextel's contribution has been through acquisition, merger, and leverage. Its comments state that its dominant position in the marketplace will come via purchase of large entities like Dial Call, Inc. and OneComm, Inc. And now that it has purchased the sweat of many, it seeks to discount the similar efforts of the remaining analog operators. To justify its actions, Nextel claims that it will provide wide-area SMR service

throughout the United States.<sup>1</sup> In fact, Nextel states that it has devoted over one-half billion dollars toward developing its wide-area service. The Commission may wish to discover how much of that money was spent on research and development and implementation, and how much was spent on acquisition, administration, and financing. T&K respectfully suggests that the Commission would discover that Nextel's claim would result in an admission against interest, once examined more thoroughly.

#### Nextel Cannot Take Credit for the Success of the SMR Industry

But the fact remains that Nextel is employing the work of others in providing services to the market to support its claims of serving the public interest. The Commission should look beyond the sheer numbers bantered about by Nextel and look to the source of the SMR industry's success. Its triumph has little, if anything, to do with Nextel. Rather, it is a combination of two elements.

First, the Commission rules created an equitable playing field, which rewarded the initiative and success of those members who strove to provide service to meet the demand and, in fact, created much of the demand in the first instance. When an operator loaded its system fully, he got more spectrum. If a market demonstrated demand, the

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<sup>1</sup> The Commission may take notice of the fact that Nextel's comments do not focus on ESMR services as much as SMR services. It appears that Nextel is shifting its claims away from its failed offering and toward its more traditional offering. That traditional SMR service has never been deemed competitive with cellular service and the like, diminishes the quality of Nextel's arguments regarding its need for "regulatory parity."

operator followed the market, without regard to county, state or Rand-McNally boundaries. Public safety entities were provided with necessary preferences and their use of the spectrum slowly but consistently increased. And end users benefitted by the use of trunking technologies and increased methods of secure communications at affordable prices. Competition thrived and many communities received the benefits of up to a dozen competing entities. In sum, the market thrived because the Commission created the proper environment and operators accepted the challenge willingly.

Second, the Commission protected the use of SMR frequencies from abuse. Real parties in interest were examined, loading figures were challenged, construction dates were confirmed, and, when necessary, greater mileage separation of systems were created to compensate for geographic anomalies. In sum, the Commission employed its regulatory skills to create an environment where the best avenues for success were legitimate operations and steady growth.

Then along came Nextel with money and political influence and the backing of Wall Street wizards who wouldn't know a radio from a radish. With increasing speed, Nextel purchased system after system, often after promising the existing operator that if they did not wish to sell, they would be forced to compete in an extremely hostile environment. Nextel knitted its acquisitions together and employed their assets to raise more money through more stock sales, strategic partnering with Motorola, and mergers with Power Spectrum, Inc. and OneComm, Inc. and Dispatch Communications, Inc., all

companies born from the dizzy whirl of SMR and ESMR speculation. These companies went from being Nextel wannabes to becoming Nextel gonnabes. And all the while, spectrum warehouses were created and sold and recreated, all under the Nextel banner.<sup>2</sup>

After a time, Nextel merely acted with greater impunity. Now, if one listened carefully, Nextel was telling the world that it created the wealth of the SMR industry. Nextel took bows for its thousands of end users and its hundreds of channels. But these were not due to anything Nextel did, except buying out other companies and effectively pleading its case for a waiver of the Commission's Rules. Beyond that, Nextel has offered little to the industry and its new technology has been a bust.

Life is a difficult proposition. It carries with it great disappointment and unfairness. One hopes that the truth will come through and carry the day, but often this is not the case. One hopes that reward will be the result of hard work and fidelity to purpose. One still hopes that a company cannot buy justice or equity or the facts. If T&K's hopes have any opportunity of coming true, then the Commission must reject these proposals. They reward only one entity, Nextel. And Nextel did not build the SMR industry. It bought it. We hope that it did not also buy the future of the hundreds of legitimate, smaller analog SMR operators as well, who only seek the ability to enjoy

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<sup>2</sup> T&K notes that Nextel looks with disdain at "speculators" in the SMR industry. T&K would like to caution the Commission that a well-funded speculator, like Nextel is, is no less of a speculator than the average infomercial customer.

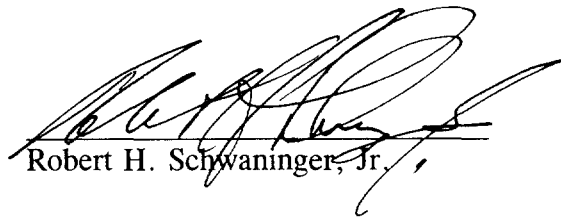
the rewards of their long effort in creating one of the most successful industries within the spectrum of telecommunications.

Conclusion

For these reasons, T&K respectfully requests that the Commission reject these proposals as contrary to the interests of the very persons who built the SMR industry into the robust service it is today.

Respectfully submitted,  
T&K COMMUNICATIONS, INC.

By

A handwritten signature in black ink, appearing to read "Robert H. Schwaninger, Jr.", is written over a horizontal line.

Robert H. Schwaninger, Jr.  
Brown and Schwaninger  
Suite 650  
1835 K Street, N.W.  
Washington, D.C. 20006  
202/223-8837

Dated: March 1, 1995

## CERTIFICATE OF SERVICE

I hereby certify that on this first day of March, 1995, I served a copy of the foregoing Reply Comments on the following by placing a copy in the United States Mail, first class postage prepaid:

Gardner, Carton & Douglas  
1301 K Street, N.W.  
Suite 900, East Tower  
Washington, D.C. 20005

Young & Jatlow  
2300 N Street, N.W.  
Suite 600  
Washington, D.C. 20037

Kelly & Povich, P.C.  
1101 30th St., N.W.  
Suite 300  
Washington, D.C. 20007

Counsel for:  
Pittencrief Communications, Inc.  
E.F. Johnson Company  
Gulf Coast Radio Fone  
Deck Communications, Inc.  
Nodak Communications  
Wiztronics, Inc.  
Raserco, Inc.  
Vantek Communication, Inc.  
Southern Minnesota Communications  
Brandon Communications, Inc.  
Dakota Electronics  
Bis-Man Mobile Phone, Inc.  
Rayfield Communications  
B & C Communications  
Radio Communications Center  
Keller Communication, Inc.  
Don Clark Radio Communications  
Pro-Tec Mobile Communications  
Automated Business Communication  
Morris Communications  
Nielson Communications  
E.T. Communications Company  
Bolin Communications System  
Diamond "L" Industries, Inc.

Counsel for:  
Ericsson Corporation

Lukas, McGowan, Nace & Gutierrez  
1111 19th Street, N.W.  
Washington, D.C. 20036

Counsel for:  
Fisher Communications, Inc.  
American Mobile Telecommunications Assoc.

Motorola, Inc.  
1350 Eye Street, N.W.  
Suite 400  
Washington, D.C. 20005

Counsel for:  
Advanced Mobilecomm, Inc.

Mintz, Levin, Cohn, Ferris, Glovsky, &  
Popeo, P.C.  
701 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

Counsel for:  
McCaw Cellular Communications, Inc.

Blooston, Mordkofsky, Jackson & Dickens  
2120 L Street, NW  
Suite 300  
Washington, DC 20554

Counsel for:  
The SMR Small Business Coalition

Mark J. Golden  
Meyer, Faller, Weisman & Rosenberg, P.C.  
4400 Jennifer Street, NW  
Suite 300  
Washington, DC 20015

Wiley Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

William R. Miller  
Russ Miller Rental  
3620 Byers Avenue  
Fortworth, Texas 76107

Counsel for:  
Personal Communications I

Counsel for:  
Robert J. Butler

Joel Freedman  
Vice President, General Counsel  
Dial Call Communications  
1355 Peachtree Street, Suite 755  
Atlanta, GA 30309

Mark Lindquist  
Communications Center, Inc.  
Box 1034  
Pierre, SD 57501

John D. Pellegrin  
1140 Connecticut Avenue, N.W.  
Suite 606  
Washington, DC 20036

Counsel for:  
American SMR Company

Duncan C. Kennedy  
Genesee Business Radio  
992 Cater Street  
Rochester, NY 14621-1910

Meyer, Faller, Weisman  
& Rosenberg, P.C.  
Allan S. Tilles  
4400 Jenifer Street, NW  
Suite 380  
Washington, DC 20015

Counsel for:  
Parkinson Electronics

Ross & Hardies  
888 16th Street, NW  
Suite 400  
Washington, DC 20006

Counsel for:  
SMR Won

Fisher, Wayland, Cooper,  
Leader & Zargoza, L.L.P.  
2001 Pennsylvania Avenue, N.W.  
Suite 400  
Washington, DC 20006

Keller & Heckman  
1001 G Street, NW  
Suite 500 West  
Washington, DC 20001

Counsel for:  
The Southern Company  
DCL Associates  
American Petroleum Institute  
US Sugar Corporation

Lewis H. Goldman  
1850 M Street  
Suite 1080  
Washington, DC 20036

Counsel for:  
Douglas L. Bradley

McCaw Cellular Communications, Inc.  
1150 Connecticut Avenue, NW  
Washington, DC 20036

Bryan Cave  
700 Thirteenth Street, NW  
Suite 700  
Washington, DC 20005-3960

Counsel for:  
CenCall, Inc.

Timothy P. Haley  
Centennial Telecommunication  
130 N. Bond Street  
Suite 201  
Bel Air, MD 21014

Latham & Watkins  
1001 Pennsylvania Ave., NW  
Washington, DC 20004

Counsel for:  
Vanguard Cellular Systems  
Raymond B. Grochowski

Charles C. Townsend  
Atlantic Cellular Company  
15 Westminster St., Suite 830  
Providence, RI 02903

Raymond J. Stone  
American Industrial & Marine Electronics, Inc.  
P.O. Box 715  
Dover, Delaware 19901

John E. Sonneland  
Courtesy Communications  
W. 801 Fifth Ave.  
Suite 410  
Spokane, WA 99204

Michael R. Carper  
4643 South Ulster Street  
Suite 500  
Denver, CO 80237

Morrison & Foerster  
2000 Pennsylvania Ave., N.W.  
Suite 5500  
Washington, DC 20006

Industrial Telecommunications Association, Inc.  
Alliance of Private 800/900 MHZ Licenses  
Frederick J. Day, Esq.  
1110 North Glebe Road  
Suite 500  
Arlington, VA 22201-5720

Cellular Telecommunications  
Industry Association  
Michael F. Altschul  
Vice President, General Counsel  
1250 Connecticut Avenue, N.W.  
Suite 200  
Washington, DC 20036

Association of Public-Safety  
Communications Officials International, Inc.  
Wilkes, Artis, Hedrick & Lawe, Chartered  
1666 K Street, N.W.  
Suite 1100  
Washington, DC 20006

Council of Independent Communication Suppliers  
Frederick J. Day  
Mark E. Crosby  
1110 N. Glebe Road  
Suite 500  
Arlington, VA 22201-5720

Organization for the Protection and  
Advancement of Small Telephone Companies  
Lisa M. Zgina, General Counsel  
21 Dupont Circle, N.W.  
Suite 700  
Washington, DC 20036

Dru Jenkinson, Inc.  
Bessozzi, Gavin & Cravn  
1901 L Street, N.W.  
Suite 200  
Washington, DC 20036

National Telephone Cooperative Assoc.  
David Cosson  
2626 Pennsylvania Ave., N.W.  
Washington, DC 20037

Spectrum Resources, Inc.  
A.C. Miller  
307 Annandale Road  
Suite 101  
Falls Church, VA 22042

Chadmoore Communications  
Keck, Mahin & Cate  
1201 New York Avenue, N.W.  
Washington, DC 20005-3919

Palmer Communications, Inc.  
Marianne H. Lepara  
12800 University Drive  
Suite 500  
Ft. Meyers, FL 33907-5333

Total Comm, Inc.  
William C. Wyatt, President  
2701 N. Van Buren  
Enid, OK 73703

Utilities Telecommunications Council  
Jefrey L. Sheldon, General Counsel  
1140 Connecticut Ave., N.W.  
Suite 1140  
Washington, DC 20036

U.S. Small Business Administration  
Jere W. Glover, Esq.  
409 3rd Street, S.W.  
Washington, DC 20416

Communications Unlimited, Inc.  
Lewis H. Goldman  
1850 M. Street, N.W.  
Suite 1080  
Washington, DC 20036

Nextel Communications, Inc.  
Robert S. Foosner  
800 Connecticut Avenue, N.W.  
Suite 1001  
Washington, DC 20006

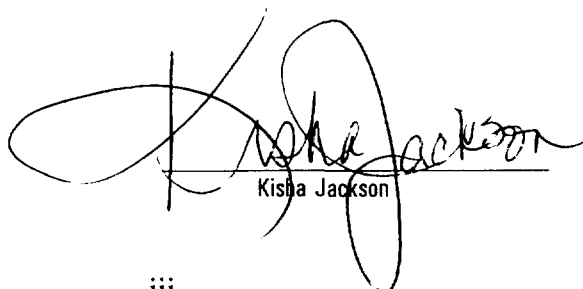
Telcelular de Puerto Rico, Inc.  
Law Offices of Richard S. Myers  
1030 15th Street, N.W.  
Suite 906  
Washington, DC 20006

Freedom Mobile Communication, Inc.  
Jerome M. Freund, President  
14 Ray Street  
Beaver Falls, PA 15010

Delta Communications, Inc.  
Kimo C. Chun, Director  
2646 Kiliha Street  
Honolulu, HI 96819

Southwestern Bell  
Linda M. Hood  
173330 Preston Road  
Suite 100A  
Dallas, TX 75252

Associated Public Safety Communications Officer, Inc.  
Wilkes, Artis, Hedrick & Lane, Chartered  
1666 K Street, N.W.  
Washington, DC 20006



Kisha Jackson